

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARK V. BORUNDA,

Petitioner,

vs.

STATE OF WASHINGTON,

Respondent.

NO. CV-04-391-LRS

ORDER DISMISSING PETITION WITHOUT
PREJUDICE

By Order filed January 3, 2005, the court re-designated Mr. Borunda's action as a habeas petition challenging his confinement in state custody under 28 U.S.C. § 2254. Specifically, the court directed Plaintiff to name his custodian as the proper respondent and to demonstrate he had exhausted available state court remedies.

On April 29, 2005, the court received a document from Mr. Borunda, titled petition under 28 U.S.C. § 2254, but captioned, "UNITED STATES OF AMERICA v. Mark V. Borunda" (Ct. Rec. 21). Mr. Borunda did not present his petition on the form sent to him by the court on January 3, 2005. Furthermore, his designation fails to comply with the requirement that a petitioner name the state officer having custody of him as the respondent to the petition. Rule 2(a), Rules Governing Section 2254 Cases in the United States District

1 Courts; *Stanley v. California Supreme Court*, 21 F.3d 359, 360 (9th
2 Cir. 1994). Accordingly, this court is deprived of personal
3 jurisdiction to direct the actions of a Respondent. *Brittingham v.*
4 *United States*, 982 F.2d 378, 379 (9th Cir. 1992); *Dunne v. Henman*,
5 875 F.2d 244, 249 (9th Cir. 1989).

6 In addition, Mr. Borunda indicates his appeal of his state
7 criminal conviction is pending in the Washington State Court of
8 Appeals, Division III. Thus, he has not exhausted available state
9 court remedies and the court cannot grant him federal habeas relief.
10 *O'Sullivan v. Boerkel*, 526 U.S. 838, 842-43 (1999). The federal
11 district court will abstain from interfering with pending litigation
12 in the state courts. See *Younger v. Harris*, 401 U.S. 37 (1971).

13 Accordingly, for the reasons set forth above and in the court's
14 initial Order, **IT IS ORDERED** the petition is **DISMISSED WITHOUT**
15 **PREJUDICE** as unexhausted and for lack of personal jurisdiction. **IT IS**
16 **FURTHER ORDERED** all pending motions are **DENIED as moot**.

17 **IT IS SO ORDERED.** The District Court Executive is directed to
18 enter this Order, enter judgement, forward a copy to Petitioner and
19 close the file.

20 **DATED** this 4th day of May, 2005.

21
22 s/Lonny R. Suko

23 _____
24 LONNY R. SUKO
25 UNITED STATES DISTRICT JUDGE
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